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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,707	04/08/2005	Bernd Zschke	268510US0PCT	6914

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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER

COONEY, JOHN M

ART UNIT	PAPER NUMBER
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1796

NOTIFICATION DATE	DELIVERY MODE
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08/27/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/530,707	Applicant(s) ZASCHKE ET AL.	
	Examiner John Cooney	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,7,8,10-12,17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,7,8,10-12,17 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20090514</u> . | 6) <input type="checkbox"/> Other: _____ |

Applicant's arguments filed 5-4-09 have been fully considered but they are not persuasive.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7, 8, 10-12, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haider et al.(2004/0014828) in view of Matsumoto et al.(6,117,937) and EP-0,786,480{previously cited}.

Haider et al. discloses preparation of rigid closed cell polyurethane foams having closed cell contents in excess of 80% that are prepared by mixing and reacting MDI isocyanates having NCO content values and viscosities meeting those of applicants' claims, polymer/graft polyols employed in amounts meeting those claimed, catalysts, and blowing agents (see abstract, paragraphs [0009]-[0017] & [0026]-[0039], examples, and claims, as well as, the entire document).

Haider et al. differs from applicants' claims in that it does not particularly employ polymer polyols as defined by applicants' claims. However, Matsumoto et al. discloses preparations of polymer/graft polyols prepared using initiators as claimed and having OH values meeting those of the claims in making polyurethane foams for the purpose of imparting good compression and durability effects to the products obtained (see column

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1 lines 11-14, column 2 line 26 - column 4 line 41 and column 5 lines 7-26, as well as, the entire document). Accordingly, it would have been obvious for one having ordinary skill in the art to have employed the polymer polyols of Matsumoto et al. in the preparations of Haider et al. for the purpose of imparting their compression and durability enhancing effects in order to arrive at the products and processes of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results.

Haider et al. differs additionally from applicants' claims 7 and 8 in that it does not specify particle sizes or distribution of their particles in their polymer polyols. However, EP-0,786,480 discloses polymer polyols having narrow particle sizes meeting those of applicants' claims for the purpose of providing polymer polyols used in urethane applications that have good processing effects (see abstract & page 6 lines 26-55, as well as, the entire document). Accordingly, it would have been obvious for one having ordinary skill in the art to have employed polymer polyols having particle sizes disclosed by EP-0,786,480 in the preparations of Haider et al. for the purpose of imparting good processing effects in order to arrive at the products and processes of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results. As to the bimodal particle distribution of applicants' claim 8, Haider et al. provides for at least one polymer polyol to be used within its teachings. Accordingly, it would have been obvious for one having ordinary skill in the art to have employed multiple polymer polyols within the teachings of Haider et al. having independent, narrow particle sizes as provided for by EP-786,480 for the purpose of providing a

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multiplicity of polymer polyols having good processing effects in order to arrive at the processes encompassed by applicants' claim 8 in the absence of a showing of new or unexpected results. It has long been held that where the general conditions of the claims are disclosed in the prior art, discovering the optimal or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233; *In re Reese* 129 USPQ 402. Similarly, it has been held that discovering the optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272,205 USPQ 215 (CCPA 1980).

Applicants' arguments have been considered. However, rejection is maintained.

Although the disclosures of Haider et al. noted in applicants' reply are noted, such specific preferred embodiments do not negate what is provided and allowed for by Haider et al.'s fully considered disclosure, including paragraph [0011]. It is maintained that Matsumoto et al. is properly looked to in order to address the deficiencies of Haider et al.'s generic teaching. Further, as Matsumoto et al. is looked to for its disclosure of polymer polyols known in the polyurethane foam art, that it is not specifically concerned with the formation of rigid foams does not negate its combination with the cited Haider et al. disclosure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Cooney whose telephone number is 571-272-1070. The examiner can normally be reached on M-F from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/John Cooney/

Primary Examiner, Art Unit 1796